

## Appendix A

### Schedule 3

#### Summary of Changes

The following summarizes the notable changes to the version of the Materials published for comment in December 2006.

#### **The Rule**

*Section 2.4 of the Rule:* We added this section to clarify that an issuer must not file a prospectus to qualify the conversion of a special warrant into other securities of the issuer unless purchasers of the special warrants have been provided with a contractual right of rescission not only of the holder's exercise of its special warrant but also of the private placement transaction pursuant to which the special warrant was initially acquired. We also made drafting changes to section 10.5 of Form F1 and section 21.5 of Form F2 to conform those sections to section 2.4 of the Rule.

*Subsection 4.3(1) of the version of the Rule published for comment:* We added subsection 4.3(2) so that the auditor review requirement in subsection 4.3(1) of the Rule does not apply to an investment fund's unaudited financial statements filed after the date of filing the prospectus that are incorporated by reference into the prospectus under Part 15 of the Rule.

*Section 5.13 of the version of the Rule published for comment:* We removed the requirement to provide certificates of substantial beneficiaries of the offering from the Rule.

*Section 5.5 of the version of the Rule published for comment:* We added subsection 5.5(4) of the Rule to clarify that regulated trust company trustees that do not perform functions for the issuer similar to those performed by the directors of a company are not required to sign the certificate if two individuals who perform these functions sign the certificate.

*Subparagraph 9.2(b)(ii) of the version of the Rule published for comment:* We changed the delivery requirement for expanded personal information forms so that the requirement in subparagraph 9.1(b)(ii) of the Rule only applies to individuals for whom an issuer has not previously delivered an expanded personal information form or, before March 17, 2008, a personal information form or an authorization to collect personal information under then existing provincial and territorial securities legislation. We also changed the statutory declaration requirement in Schedule 1 of Appendix A of the Rule to a consent and certification requirement.

*Section 9.1 of the version of the Rule published for comment:* We replaced section 9.1 of the version of the Rule published for comment with section 9.3 of the Rule. In response to comments (see items 2.1 through 2.9 in the Summary of Comments set out in Schedule 2 of this Appendix), we removed several types of contracts from the list, now in subsection 9.3(2) of the Rule, of material contracts that must be filed even if they are entered into in the ordinary course of business. Also in response to comments, we reduced the number of provisions that may not be redacted or omitted from the list now in subsection 9.3(4) of the Rule. In place of the

expanded list in the version of the Rule published for comment, we added guidance in subsection 3.6(8) of the Companion Policy explaining the meaning of “terms necessary for understanding the impact of the material contract on the business of the issuer”, which terms may not be redacted or omitted under paragraph 9.3(4)(c) of the Rule.

*Section 11.3 of the version of the Rule published for comment:* We changed the requirement so that section 11.2 of the Rule now permits the prospectus to qualify compensation securities up to 10% of the base offering and the securities represented by the over-allotment option.

## **Form F1**

*General Instruction (15) of Form F1:* On October 12, 2007, the Ontario Securities Commission published amendments to OSC Rule 41-501, which included adding Instruction (12) to Ontario Securities Commission Form 41-501F1 *Information Required in a Prospectus (Form 41-501F1)*. This amendment is expected to come into force on December 31, 2007. As a consequence, we added General Instruction (15) of Form F1, which is substantially identical to Instruction (12) of Form 41-501F1.

*Section 1.7 of the version of Form F1 published for comment:* In section 1.7 of Form F1, we limited the requirement to disclose, in a preliminary prospectus, the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, to those instances where the issuer has already publicly disclosed this information in a jurisdiction or a foreign jurisdiction. We also added subsection 4.2(2) of the Companion Policy to provide further guidance regarding our concerns about disclosure of this information on a selective basis.

*Section 32.1 of the version of Form F1 published for comment:* We changed section 32.1 of Form F1 to clarify that the financial statements of an issuer required under this section includes the financial statements of a proposed acquisition of a business that would be a predecessor entity where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

When multiple entities are acquired or proposed to be acquired to form the basis of the business of an issuer, Item 32 of Form F1 requires sufficient historical financial statement disclosures in the prospectus of all the entities involved. In addition to the requirements in Item 32, issuers should also consider the applicability of the disclosure requirements in Item 35. Specifically, issuers may be required to include proforma financial statements to reflect the acquisitions or proposed acquisitions.

*Section 35.1 of the version of Form F1 published for comment:* The IPO venture issuer is a new issuer category introduced for the purposes of harmonizing prospectus disclosures for issuers that will meet the definition of a venture issuer under NI 51-102 upon the completion of their initial public offering. IPO venture issuers must identify themselves as an IPO venture issuer under section 20.11 of Form F1.

When assessing the significance of recently completed or proposed acquisitions, the IPO venture issuer would apply the significance tests applicable to a venture issuer under Part 8 of NI 51-102. However, for the purposes of financial statement disclosure for significant acquisitions in the prospectus under Item 35 of Form F1, the timelines under subsection 8.2(2) of NI 51-102 do not apply.

For the purposes of including issuer financial statements in the prospectus under Item 32 of Form F1, an IPO venture issuer must include annual financial statements for financial years ended more than 90 days before the date of the prospectus and interim financial statements for the most recent interim period that ended more than 45 days before the date of the prospectus.

## **Form F2**

*Generally:* The Instrument implements a new prospectus form for investment funds that are not conventional mutual funds, such as exchange-traded funds, labour sponsored investment funds, commodity pools, scholarship plans, structured products and other non-redeemable investment funds. Certain commenters noted that Form F2 did not distinguish between the various types of investment funds, many of which are quite distinct and different from each other.

While we believe that Form F2 sets out the minimum prospectus disclosure requirements for investment funds generally, we recognize that certain investment funds (in particular, scholarship plans) may find some of the disclosure items in Form F2 not sufficiently tailored for their prospectus disclosure purposes. Consequently, we have revised Form F2 to permit scholarship plans to modify the disclosure items to accommodate the disclosure of unique aspects of scholarship plans. We intend to monitor the functionality of Form F2 through our review of long form prospectuses.

*General Instruction (1) of the version of Form F2 published for comment:* In response to comments concerning flexibility for investment funds to include specific information that is applicable to their business, we clarified in General Instruction (1) that investment funds are not prohibited from providing information beyond what is required by the Form. General Instruction (6) in Form F2 also permits investment funds to omit inapplicable items. Therefore, in response to comments that sought clarification regarding whether specific items would be relevant for investment funds, we deleted certain inapplicable items in order to further tailor and streamline Form F2 for the prospectus disclosure of investment funds. As well, we re-organized the sequence of the disclosure items, added headings to give more prominence to items that are key to investment funds, and consolidated related items to improve the readability of an investment fund prospectus.

*General Instruction (11) [now General Instruction (7) of Form F2] of the version of Form F2 published for comment:* In response to comments received regarding the use of Form F2 by scholarship plans, we revised General Instruction (11) to permit scholarship plans to modify the disclosure items to reflect the special nature of their investment structure and distribution mechanism. In providing scholarship plans with such flexibility, our expectation is that scholarship plans will continue to present the material information that is currently presented in their prospectuses.

*Items 3.6(5) [now item 3.6(4) of Form F2] and 7.2 [now item 11.1 of Form F2] of the version of Form F2 published for comment:* We clarified that the annual returns and management expense ratio provided must be drawn from the most recently filed annual management report of fund performance of the investment fund.

*Item 11.2 of the version of Form F2 published for comment [now item 15.2 of Form F2]:* We modified this item so that investment funds in continuous distribution are not required to disclose the circumstances under which short-term trading restrictions will be waived.

*Item 41 of the version of Form F2 published for comment [now item 38 of Form F2]:* We clarified that a new investment fund must include its opening balance sheet in the prospectus, accompanied by the auditors' report prepared in accordance with NI 81-106.

## **The Companion Policy**

*Subsection 1.2(7) of the version of the Companion Policy published for comment:* National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* was published for comment on August 31, 2007. If all necessary ministerial and other approvals are received for the rule to which this policy relates are received, we are targeting NP 11-202 to be effective on **March 17, 2008**. It will replace NP 43-201. Accordingly, we removed all references to NP 43-201 from the Companion Policy.

If there is a delay in implementing NP 11-202, we will not rescind NP 43-201 and it will continue to apply to the review of prospectuses in multiple jurisdictions until NP 11-202 is effective. We will advise the market in a CSA notice if there is a delay in implementing NP 11-202.

*Subsection 2.8(3) of the Companion Policy:* We added this subsection to clarify that we would not generally consider the disclosure of the contractual right of rescission in the prospectus as satisfying the condition in section 2.4 of the Rule unless there is a prior contract between the issuer and the holder of the special warrant or other security under which the issuer granted a contractual right of rescission to the holder.

*Section 4.10 of the Companion Policy:* On October 12, 2007, the Ontario Securities Commission published amendments to the companion policy to OSC Rule 41-501 (**41-501CP**), which included adding section 2.10 of 41-501CP. This amendment has an expected effective date of December 31, 2007. As a consequence, we added section 4.10 of the Companion Policy, which is substantially identical to section 2.10 of 41-501CP.

*Subsection 5.9(1) of the version of the Companion Policy published for comment:* To clarify the application of Part 8 of the companion policy to NI 51-102 to significant acquisition disclosure in a long form prospectus, we provided a more detailed cross reference in subsection 5.9(1) of the Companion Policy.

## **Amendment Instruments**

## ***Generally***

We made a number of changes to the versions of the amendment instruments published for comment to reflect changes made to the Rule, Form F1, Form F2, and the Companion Policy.

### ***Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure***

*Section 1.5 of amendments to NI 81-101 published for comment [now section 1.7 of amendments to NI 81-101]:* We revised this section so that only unaudited financial statements incorporated by reference in a simplified prospectus at the date of filing the simplified prospectus are required to be reviewed by the fund's auditor.

*Section 1.9 of amendments to NI 81-101 published for comment:* We deleted the provision that stated that a certificate required under Part 6 [now Part 5.1] may be omitted from a pro forma simplified prospectus as this provision replicated subsection 2.3(2) of NI 81-101, which already does not require that a pro forma simplified prospectus be certified.

*Section 1.10 of amendments to NI 81-101 published for comment [now section 1.11 of amendments to NI 81-101]:* We modified this section so that mutual funds are not required to disclose the circumstances under which short-term trading restrictions will be waived.

*Section 1.10 of amendments to NI 81-101:* We repealed sections 7.2 and 7.3 of NI 81-101 as those transitional provisions are no longer applicable.

### **Amendment Policies**

*Amendments to NP 12-202:* We made a consequential amendment to NP 12-202 to change a reference from the personal information specified in Appendix B of NI 44-101 to the personal information form and authorization in the form set out in Appendix A of the Rule. This consequential amendment was not published for comment because NP 12-202 only became effective July 27, 2007.